HONOURABLE SRI JUSTICE K.C. BHANU

W.P.No.10585 of 2000

Dated 20th August, 2005

Between:

M.Venkatesulu, S/o.M.Nagaiah,

E.108224, Junior Assistant (Material)

Aged about 37 years, R/o.Vijayawada,

Krishna Dist. and another .. Petitioners

And

The APSRTC rep. by its Managing

Director, Musheerabad, Hyderabad .. Respondent

HONOURABLE SRI JUSTICE K.C. BHANU

W.P.No.10585 of 2000

ORAL ORDER:

This writ petition is filed seeking a Mandamus declaring the action of the respondent in not considering the representation dated 24.1.2000 of the petitioners for appointment to the post of Traffic Apprentice (Trainee) as illegal and arbitrary.

The case of the petitioners is that in response to the notification dated

13.9.1993 issued by the respondent, inviting applications from the departmental candidates to the post of Traffic Apprentice (Trainee), the petitioners applied for the same. On being called, the petitioners attended the interviews, but on 15.5.1997, the notification was cancelled. Again, the respondent issued fresh notification dated 7.11.1997. When the petitioners applied for the said post seeking age relaxation, their applications were not considered, but the respondent appointed candidates, who were over-aged. Aggrieved by this, the petitioners filed W.P.No.13649 & 18433 of 1997, and this Court, on 14.12.1999, directed the respondent to appoint them, as they are selected candidates. The petitioners made representations dated 24.1.2000 and 29.1.2000 respectively to the respondent with regard to their appointment, but the respondent has not considered their cases so far. Hence, this writ petition has been filed.

The respondent filed counter affidavit *inter alia* denying the averments of the affidavit and stated that the petitioners have not challenged the notification dated 13.9.1993. Though the departmental candidates were given age relaxation, the petitioners were found to be over-aged and therefore, their cases were not considered. Hence, the writ petition may be dismissed.

Heard the learned counsel for the petitioners and the learned standing counsel for the respondent and perused the material placed on record.

The learned counsel for the petitioners has contended that once the benefit is extended to the co-employee, the same benefit should have been extended to the petitioners also, and because of cancellation of notification, dated 13.9.1993, the petitioners may not be eligible for any future appointment for the post of Traffic Apprentice (Trainee), and the petitioners are fully qualified and passed the departmental test.

On the other hand, the learned counsel for the respondent has contended that the notification dated 13.9.1993 inviting applications for the post of Traffic Apprentice (Trainee) is not under challenge and

the decision of the Division Bench which was confirmed by the Apex Court would not apply to the petitioners.

There is no dispute with regard to the notification dated 13.9.1993, inviting applications for the post of Trainee Apprentice (Trainee). In pursuance of the said notification, the petitioners appeared for written examination as well as interview as departmental candidates, but subsequent to that notification, interviews were conducted, but the said notification was cancelled on 15.5.1997. Admittedly, the petitioners have not challenged the cancellation of the notification. Thereafter, the respondent-Corporation issued another notification dated 7.11.1997 inviting applications from the eligible candidates including departmental candidates. The petitioners also submitted their applications in response to the fresh notification, but the grievance of the petitioners is that this case is similar to that of P.C.Ayyala Reddy and Krishna Reddy wherein this Court in W.P.Nos.13649 and 18433 of 1997, dated 14.12.1999 held as follows:

> *"In view of what is stated supra, we allow the writ petitions only to the extent of the petitioners herein directing their appointment to the posts applied by them in case their names appeared in the select list pursuant to the Notification dated 7.9.1993. Rest of the vacancies can be made available to the candidates, who had applied for appointment pursuant to the later notification dated 5.9.1997. No order as to costs."*

The said order has become final in view of the fact that Special Leave Petition filed by the Corporation was dismissed by the Apex Court. As rightly contended by the learned standing counsel for the respondent the petitioners cannot have any right of appointment in the post of Trainee Apprentice (Trainee), but at the same time, the case of the other similarly situate persons was considered by the Corporation. When the petitioners are fully qualified and have become successful in the written test, interview and also in the departmental test, it is for the respondents to take appropriate decision in view of the fact that if any future vacancies are notified by the Corporation, the petitioners will not become eligible in view of their bar age. It is made clear that

the petitioner cannot have any right of appointment to the post of Trainee Apprentice (Trainee).

The learned counsel for the petitioners has placed strong reliance on the decision reported in ***K.C.Sharma Vs. Union of India*** wherein the Apex Court held to the following effect:

> *"The validity of the retrospective amendments introduced by the impugned notification dated December 5, 1988 had been considered by the Full Bench of the Tribunal in its judgment dated December 16, 1993 in O.A.No.395-403 of 1993 and connected matters and the said notifications insofar as they gave retrospective effect to the amendments were held to be invalid as being violative of Articles 14 and 16 of the Constitution. Since the appellants were adversely affected by the impugned amendments, they sought the benefit of the said decision of the Full Bench of the Tribunal by filing representations before the Railway Administration. Since they failed to obtain redress, they filed the application (O.A.No.774 of 1994) seeking relief before the Tribunal in April, 1994. The said application of the appellants was dismissed by the Tribunal by the impugned judgment on the view that the application was barred by limitation. The Tribunal refused to condone the delay in the filing of the said applications."*

This decision has no application to the facts of the present case.

However, considering the fact that the petitioners are qualified in both the written examination and the interview, I consider it appropriate to direct the respondents to consider the case of the petitioners sympathetically in the existing or future vacancies if any available in the Corporation.

With the above direction, the writ petition is disposed of. In the circumstances of the case, there shall be no order as to costs.

20.08.2005

bcj